

Workers enjoy more protection in countries that have ratified ILO Convention No. 181 on private employment agencies

World Employment Confederation assessment finds that ILO Convention No. 181 enhances labour market performance and protection for workers compared to Convention No. 96

Executive Summary

The World Employment Confederation has carried out an assessment of the benefits linked to the ratification of the ILO Convention on Private Employment Agencies, 1997 (No. 181) and has compared countries that have ratified Convention 181 with countries that have ratified ILO Convention No. 96, restricting the use of private employment agencies.

The assessment finds that countries under Convention No. 181 fare better than those under Convention No. 96. Notably, countries that have ratified Convention No. 181 present:

1. Lower levels of informal and undeclared work;
2. High correlation with democracy
3. More cooperation between public and private employment services;
4. Greater protection for freedom of association;
5. Full respect for the right to strike;
6. Meaningful and constructive social dialogue in the temporary agency work sector;
7. Better protection of agency workers by forbidding fee-charging;
8. Better wages for agency workers;
9. Controlled and mitigated development of the industry.

This shows that countries that have ratified Convention No. 181 enjoy workers with higher levels of protection and overall labour markets that perform better compared to countries that are still stuck under the restrictive framework of Convention No. 96.

In light of these benefits, the World Employment Confederation calls all governments to ratify Convention No. 181 as a key instrument to improve workers' conditions and protection as well as the performance of their labour markets.

Background

Since its establishment in 1967, The World Employment Confederation has been actively advocating for appropriate regulation of private employment agencies (PrEAs) as a necessary precondition to enable PrEAs to improve the functioning of labour markets, while at the same time enhancing and protecting workers employed through their services.

The International Labour Organization (ILO) already in 1933, four years after its constitution, dealt with PrEAs, adopting Convention No. 34 on fee-charging employment agencies calling for their abolition. In 1949, the ILO revised the ban on PrEAs by softening its stance and giving its members the choice between abolition and strict regulation of fee-charging employment agencies.

In 1997 the ILO moved away from the restrictive approach on the industry as it recognised the role that “[...] private employment agencies may play in a well-functioning labour market, and [...] the need to protect workers against abuses [...]”¹. As a result, the ILO adopted Convention No. 181 on private employment agencies and its supplementing Recommendation No. 188², with the widespread support of workers, employers, and governments.

Convention No. 181 and Recommendation No. 188 represent a balanced regulatory framework that allows the ratifying country to take advantage of the contribution of private employment agencies and their services to enhance matching between labour demand and supply and protect workers’ rights to freedom of association and collective bargaining, as well as preventing abuses by rogue operators, who take advantage of regulatory vacuum and lack of enforcement.

In 2016 Convention No. 181 reached 32 ratifications, surpassing the number of current ratifications (24) for Convention No. 96³ and sending a strong signal that countries are moving away from the old-fashioned and restrictive approach of Convention No. 96. In general, Convention No. 181 is the 4th most ratified technical up-to-date convention since 1990⁴, while it ranks 34th among all the technical conventions adopted so far.

To further promote ratifications of Convention No. 181, the World Employment Confederation has conducted a research that compares countries that have ratified Convention No. 181 with countries that have ratified Convention No. 96 by measuring them on various dimensions linked to labour market performance and protection of workers.

The World Employment Confederation assessment finds that C181 do better than C96, since they show low rates of informal work, and they ensure better protection of workers by not charging them any fees for their services or by applying equal pay in the majority of cases.

On the basis of these results, The World Employment Confederation encourages those countries that have ratified Convention No. 96 to adopt Convention No. 181 as a way to improve the performance of their labour markets and, as a result their overall competitiveness⁵.

¹ Preamble of Convention No. 181.

² The International Labour Conference in 1997 adopted Convention No. 181 with 347 votes for, 5 against and 30 abstentions.

³ Convention No. 34 has been classified as shelved convention, no longer relevant and open for ratification.

⁴ Right after the Maritime Labour Convention, Safety and Health in Mines Convention, and Maternity Protection Convention.

⁵ See correlation of good labour market performance and economic competitiveness, in the WEF, Global Competitiveness report 2012-2013 and BCG and Ciett, "Adapting to Change", 2011.

Benefits of ratifying ILO Convention No. 181

1. Ratifying Convention No. 181 drives down informal work

Countries that have ratified Convention No. 181 (C181)⁶ display significant lower levels of informal work than countries that have ratified Convention No. 96 (C96). The average rate of informal work in the two groups of countries is:

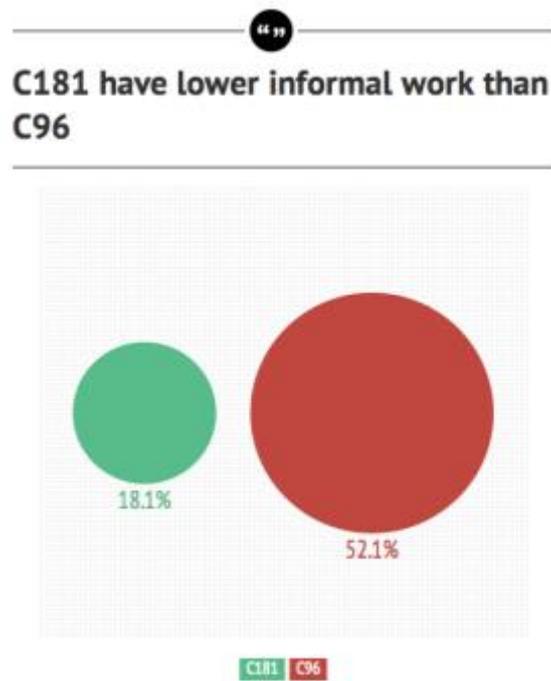


Figure 1 – Average rate of informal work

This shows that allowing private employment agencies to operate is a factor contributing to the reduction of informal work. Indeed, temporary agency work offers an effective way to encourage transitions from the informal sector into decent work. Research shows an inverse correlation between penetration rate of temporary agency work and undeclared work⁷.

⁶ The full list of C181 can be found on the ILO website, NORMLEX.

⁷ BCG and Ciett, "Adapting to Change", 2011, p. 42.

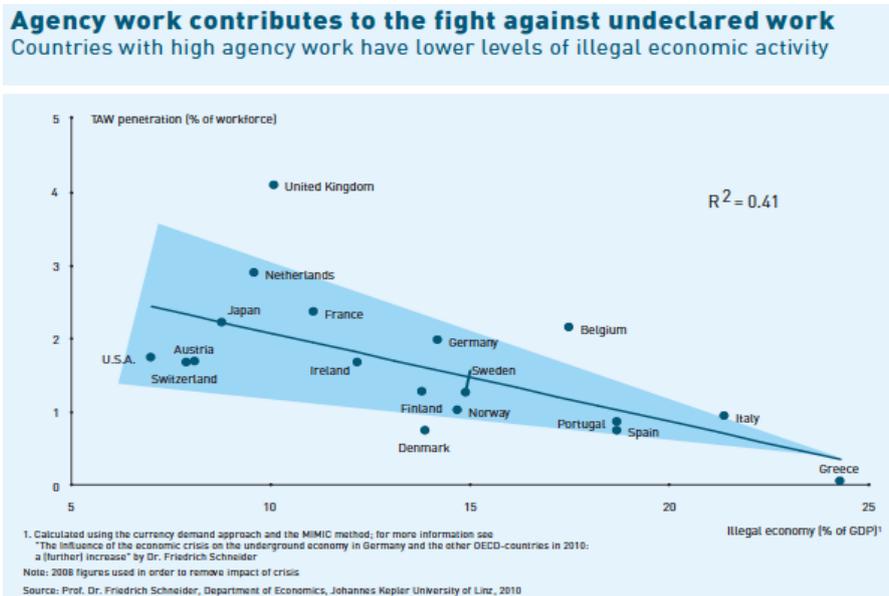


Figure 2 – Negative correlation between agency work and undeclared work

The Italian government introduced agency work in 1997 with the intent of reducing unemployment and bringing undeclared workers into the formal economy. Since 1997 the penetration rate of agency work grew from 0% to 1% in 2007, while the share of illegal work decreased from 27% to 22% and the unemployment rate fell from 11% to 7% over the same period⁸.

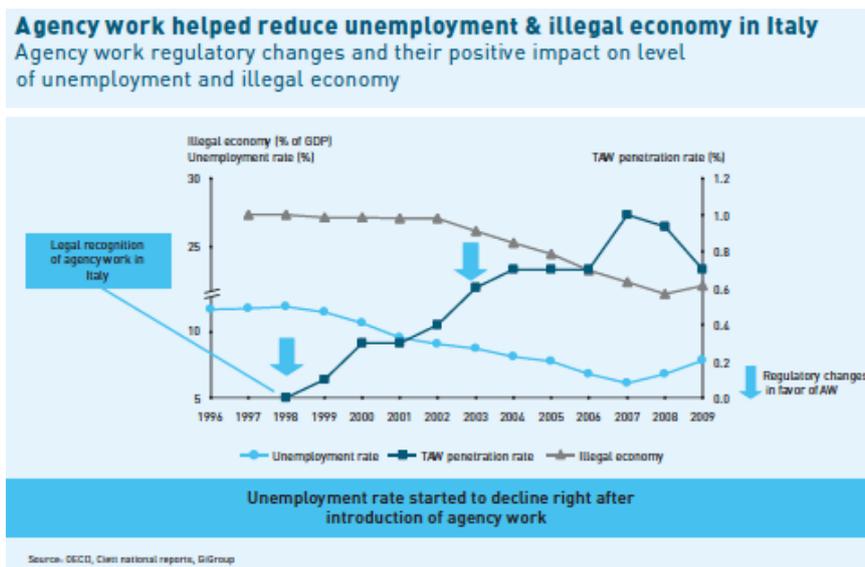


Figure 3 – The drop of informal work and unemployment rate after the introduction of agency work

⁸ Ibid.

2. Convention No. 181 is strongly correlated with democracy

There is a strong correlation between ratification of Convention No. 181 and the democratic development of a country. Indeed, among the 32 C181 only Fiji is not a democratic regime.

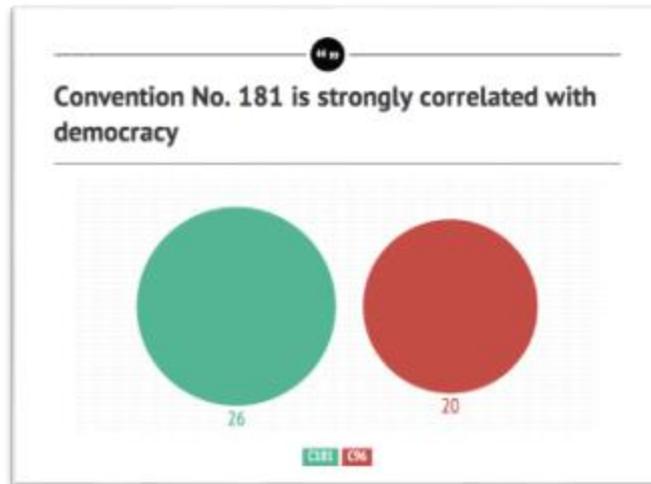


Figure 4 – Number of democratic countries

3. Countries under Convention No. 181 have cooperation between public and private employment services

Convention No. 181 promotes cooperation between public and private employment services⁹. The number of countries where there is cooperation is higher in C181 than in C96:

⁹ For the purpose of this paper, the term private employment services is used to indicate private employment agencies.

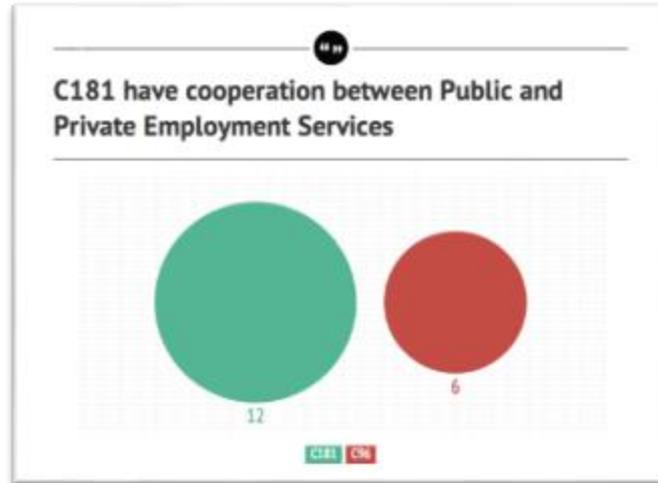


Figure 5 – Number of countries with cooperation between public and private employment services

This can be explained with the opposite approach of the two conventions: Convention No. 96 portrays public and private employment services as competitors, whereby the existence of the public employment services entails that private employment services should gradually disappear or should be severely restricted¹⁰.

By contrast, Convention No. 181 sees public and private employment services as complementary and calls governments to promote cooperation between them (art. 13)¹¹, in line with the employment services convention (Convention No. 88) already adopted in 1948¹².

Cooperation between public and private employment services is an effective way to streamline matching of labour demand and supply: by playing and complementing each other's strengths, public and private employment services enhance labour market participation and increase the rate of transition from unemployment to work. Cooperation may entail exchange of job vacancies, sourcing candidates, providing counselling, matching services and offer opportunities to enhance and develop skills.

4. Convention No. 181 favours freedom of association

Convention No. 181 is a useful instrument to foster and encourage freedom of association and collective bargaining. These cornerstone principles are enshrined both in the preamble of Convention No. 181 and in articles 4 and 11. On the other hand, Convention No. 96 is silent on the freedom of association and the right to collective bargaining.

¹⁰ See articles 3 and 5 of Convention No. 96

¹¹ See also Recommendation No. 188, paragraphs 16 and 17 reinforcing the call for cooperation.

¹² See article 11 of Convention No. 88.

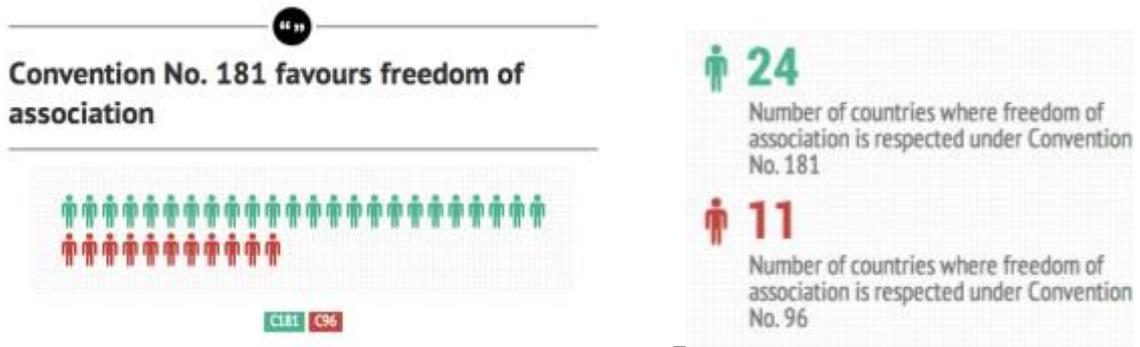


Figure 6 – Countries where freedom of association is respected

Although it cannot be argued that Convention No. 96 hampers freedom of association, it can be seen that 24 C181 fully respect freedom of association, as opposed to only 11 C96¹³.

The majority of countries under Convention No. 181 prohibit strike breaking with temporary agency workers

The majority of C181 prohibit that temporary agency workers are made available to replace striking workers:

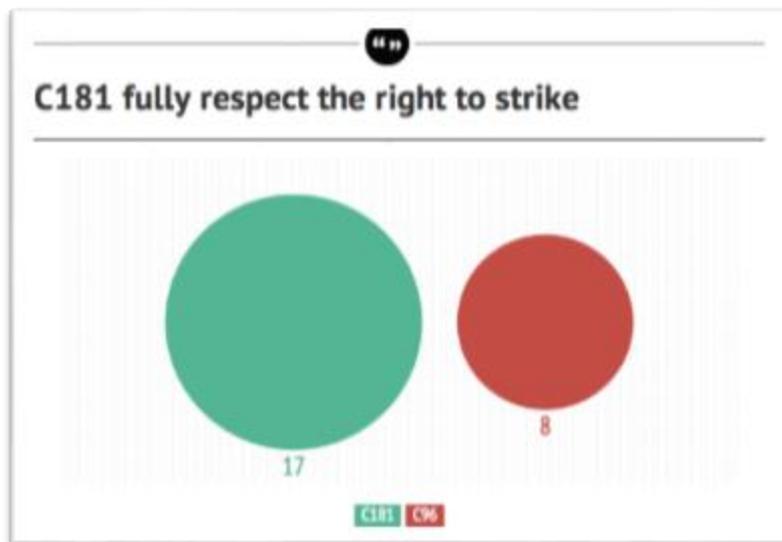


Figure 7 – Number of countries prohibiting strike breaking with agency work

Although there is no specific prohibition in Convention No. 181, this principle is in line with the protection of the right to collective bargaining and is further specified in Recommendation No. 188¹⁴.

¹³ The number is based on the observations of the Committee of Experts on the Application of Conventions and Recommendations, [see the ILO NORMLEX website](http://www.ilo.org/normlex).

¹⁴ Paragraph 6 of the Recommendation.

5. Convention No. 181 facilitates social dialogue in the temporary agency work sector

Convention No. 181 is beneficial to developing social dialogue in the temporary agency work sector. Based on the data available¹⁵, C181 that have social dialogue in the temporary agency work sector are 7 times more than C96:



Figure 8 – 14 C181 have social dialogue in the temporary agency work sector as opposed to 2 C96

6. Countries under Convention No. 181 do not charge fees to workers

The World Employment Confederation survey has found that C181 do not charge fees to workers¹⁶, this is not the case for C96:



¹⁵ BCG and Ciett, *op. cit.*, & Eurofound, “Temporary agency work and collective bargaining in the EU”, 2009.

¹⁶ Currently the Committee of Experts on the Application of Conventions and Recommendations is assessing if Suriname is correctly applying article 7 of Convention No. 181. In 2009 the Committee requested more information: www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2308506:NO.

Figure 9 – Countries charging fees to workers

Prohibiting recruitment fees charged is a safeguard for workers¹⁷. Among the C96 that still charge fees there are Pakistan, Sri Lanka, and Turkey.

The World Employment Confederation members are committed to this principle and fully respect it as part of their code of conduct also in countries where Convention No. 181 has not been yet ratified and where there is no specific regulation on the industry, e.g. Russia.

Equal pay is applied more in countries that have ratified Convention No. 181

The number of C181 that observe the equal pay principle is double than that of C96:

C181	C96
14	7

Table 1: Countries applying equal pay

Although Convention No. 181 does not specify what level of pay is applicable for agency workers, since it is national competence, it still offers the minimum requirements that countries should observe. These principles can be a starting point for governments to build on and provide better conditions¹⁸ and indeed 14 C181 have adopted equal pay. The same cannot be argued for Convention No. 96, which does not have any provisions on workers' protection and consequently on wage.

Convention No. 181 does not lead to massive development of the industry

The ratification of Convention No. 181 does not lead to a massive expansion of the PrEAs sector in the countries that have ratified it. On the contrary, comparing the penetration rate of the temporary agency work industry, The World Employment Confederation finds that it is lower in C181 than in C96:

¹⁷ No fee charging is also in line with the principle of free placement services that was first established as a standard for public employment services in ILO Convention No. 2 on Unemployment of 1919 and again in Convention No. 88 in 1949.

¹⁸ Article 11 of Convention No. 181.

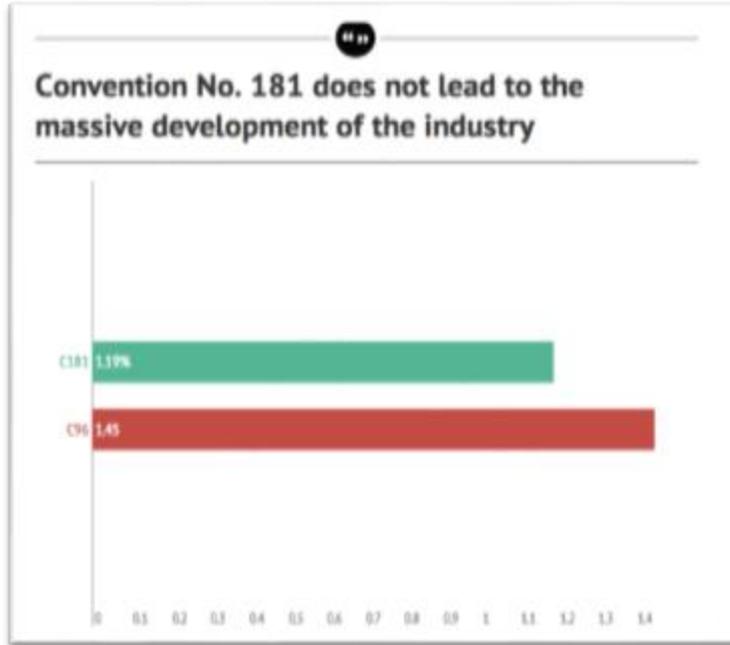


Figure 10 – Penetration rate of temporary agency work

This result can be explained by the aim of Convention No. 181, which is “to allow the operation of private employment agencies as well as the protection of the workers using their services, within the framework of its provisions”¹⁹. Offering a regulatory framework that balances freedom of private employment agencies to operate and protection of workers, can lead to some restrictions:

C181	C96
25	15

Table 2: Number of countries with licensing systems for private employment agencies

C181	C96
11	6

Table 3: Number of countries where reasons for use of temporary agency work exist

C181	C96
7	4

¹⁹ Article 2.3 of Convention No. 181.

Table 4: Number of countries with sectoral bans on temporary agency work

This shows that Convention No. 181 allows for the industry to operate in a controlled way. Some restrictions, such as licensing, are needed to separate the good private employment agencies from the rogue operators that can abuse the workers. Other restrictions can be justified on grounds of general interest to protect the workers, for example for health and safety issues.

Although it can be arguable if sectoral bans on temporary agency work or reasons for its use are justified or not, it is a debate that has to take place at the national level. It suffices to underline here that Convention No. 181 can allow for some restrictions on the industry to protect workers and, as showed in this paper, the PrEAs sector is less developed and more restricted in C181 than in C96.

Recommendations and way forward

In the light of the benefits of adopting Convention No. 181, the World Employment Confederation encourage all governments to ratify the Convention to ensure a sound development of the industry, to enhance protection of workers and overall improve labour market performance.

Ratification of Convention No. 181 will be also instrumental to separate the good agencies from the rogue agencies that take advantage of lack of regulation to operate at the expenses of the reputable industry and to the detriment of workers' rights.

The World Employment Confederation has been actively promoting Convention No. 181 since it came into force and, together with the ILO, the World Employment Confederation continues to raise awareness on the importance of this instrument to enable the private employment agencies to best contribute to the labour market.

The World Employment Confederation therefore calls on trade unions, employers' associations and all stakeholders to work together to promote Convention No. 181 and help establish balanced regulation for private employment agencies in order to reap the benefits of their contribution to the labour market.